

Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2014

Robert P. Young, Jr.,
Chief Justice

147415

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 147415
COA: 308654
Kent CC: 11-007667-FC

MELVIN JAMES MARSHALL,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the June 4, 2013 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we VACATE in part the judgment of the Court of Appeals and we REMAND this case to the Court of Appeals for reconsideration in light of *People v Hardy*, 494 Mich 430, 438 (2013), and *People v Osantowski*, 481 Mich 103, 111 (2008). Determining whether a trial court properly scored sentencing variables is a two-step process. First, the trial court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. *Hardy*, 494 Mich at 438. The clear error standard asks whether the appellate court is left with a definite and firm conviction that a mistake has been made. See *Douglas v Allstate Ins Co*, 492 Mich 241, 256-257 (2012). Second, the appellate court considers de novo "[w]hether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute" *Hardy*, 494 Mich at 438. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.



s0325

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 1, 2014


Clerk